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Mandatory Prelicensure Legal Internship: An Idea Whose Time Has Come Again?

Stephen R. Alton*

I. INTRODUCTION

This Article examines the issue of whether some form of apprenticeship or internship¹ should be required of all applicants seeking admission to the practice of law in the United States. Frances K. Zemans and Victor G. Rosenblum stated the problem succinctly in their study of the Chicago Bar:

Although formal legal education contributes greatly to the development of the skills and knowledge requisite to the practice of law, those skills to which law school contributed most were not those most useful either to the aggregate bar or to practitioners of individual specialties. Sorely neglected by law schools are interpersonal skills so important to the client-oriented problem solving that is the task of the legal professional.

Although disagreements over the training of lawyering competencies are rampant, there seems to be some agreement that it would be preferable if many of these skills were acquired before licensure.²

The issue is not a new one; for centuries, some form of law-office apprenticeship was a requirement for admission to practice

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1. The terms "apprenticeship" and "internship" are often used interchangeably in the literature. For purposes of this Article, I shall, unless otherwise indicated, use the term "apprenticeship" to refer to the historical requirement of law-office training as a prerequisite for admission to the bar. Unless otherwise indicated, the term "internship," with its more modern connotation, shall be used to refer to the contemporary practice of requiring some form of on-the-job practice experience as a prerequisite for admission to the practice of law or another profession in the United States.

2. Frances K. Zemans & Victor G. Rosenblum, *Preparation for the Practice of Law—the Views of the Practicing Bar*, 1980 AM. B. FOUND. RES. J. 1, 28-29.

as a barrister or solicitor in England.³ That practice continues there today,⁴ as it does in the former British colony of Canada.⁵ Moreover, in America's colonial and ante bellum past, law-office apprenticeship was by far the predominant mode of legal training for aspirants to the bar.⁶ Nor is an apprenticeship requirement, in its modern incarnation of internship, unusual as a prerequisite for admission to practice a profession in the United States; numerous other professions currently impose such a requirement on those wishing to join their ranks.⁷

This Article explores the wisdom of imposing an internship requirement on aspiring lawyers as a prerequisite for licensure.⁸ It is my position that such a requirement⁹ can be beneficial to the new attorney, to the profession, and to the public and should thus be mandated for all those who seek admission to the practice of law. This Article begins by briefly examining the history in the United States of law-office apprenticeship as a means of legal

3. See Kevin M. Teeven, *An American Lawyer's View of English Legal Education*, 11 N. KY. L. REV. 355, 355 (1984).

4. See *infra* notes 46-47 and accompanying text.

5. See *infra* notes 62-65 and accompanying text.

6. See *infra* notes 10-20 and accompanying text.

7. See *infra* appendix.

8. In the interests of time and space, this Article will *not* explore some related subjects, except to the limited extent that these related subjects are useful in developing my thesis regarding mandatory legal internships. I do not deal here with the so-called "diploma privilege" by which graduates of certain law schools are admitted to the practice of law without having to take their state's bar examination. Nor do I discuss academic prerequisites for taking the bar examination, such as mandatory coursework. Furthermore, I do not treat the subject of proposed standards, including possible examinations, for admission to practice before the federal bar. The matters of mandatory clinical education at the law school level, on the one hand, and required postlicensure continuing legal education, on the other hand, are not addressed here. This Article does not examine the issue of whether more courses dealing with practice skills, including legal clinics, ought to be offered in law schools, nor does it examine the best way to teach such courses. Finally, it should be noted that this Article does not discuss law office or private study as an alternative to law school training in satisfaction of the legal education requirement for admission to the practice of law, except to the extent that this topic relates to the history of the subject of this Article. The general issue of lawyer competence has, in large measure, given rise to the recent discussions about legal internships and has also been responsible, at least in part, for discussions about these related matters with which this Article does not deal.

9. At this point, it may be useful to distinguish between the type of law-office training that is an *alternative* to formal law school study as a means of satisfying the legal education requirement for admission to the bar, and a period of law-office training, in the form of a postlaw-school internship, which is *supplemental* to a law school education and which would be an additional prerequisite for bar admission. While only the latter form of office training is the subject of this Article, such training cannot be fully understood without placing it in historical perspective by an examination of the former, its direct ancestor.

education. I then proceed to an examination of modern internship requirements in England and Canada. There follows a discussion of some of the more recent thinking on the issue of imposing such an internship requirement on would-be American lawyers. This Article concludes with a call for the imposition of a mandatory, one-year, postgraduate, prelicensure legal internship on all bar applicants and with some thoughts regarding its implementation. The Appendix to this Article surveys the contemporary American internship requirements in the professions of medicine, certified public accountancy, architecture, and psychology.

II. A BRIEF HISTORY OF LAW-OFFICE APPRENTICESHIP IN AMERICA

In England's eighteenth-century American colonies, a man¹⁰ who desired to prepare himself for a career in law had five options open to him.¹¹ First, he could attend one of the few existing colleges and take courses in law and related subjects.¹² Second, he could engage in the private, self-directed study of law.¹³ Third, he could clerk in the office of the clerk of a court of record.¹⁴ Fourth, he could, if his resources afforded this luxury, enter one of the Inns of Court in London and there pursue his legal studies.¹⁵ Finally, and most usually, he could serve an apprenticeship in the law office of a practitioner.¹⁶ This form of apprenticeship, sometimes referred to as "reading law," was common to all of the thirteen colonies.¹⁷ Under the influence of the English bar, "a system of apprenticeship coupled with a formal examination was the standard toward which leading lawyers in North America were striving at the time of independence."¹⁸ By the end of the American Revolution, "few would have considered offering themselves as full-time attorneys without some period of apprenticeship."¹⁹ In-

10. In the interest of historical accuracy, the term "man" is used throughout most of this section to refer to an aspirant to the bar.

11. 2 ANTON-HERMANN CHROUST, *THE RISE OF THE LEGAL PROFESSION IN AMERICA* 173 (1965).

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. See Charles R. McKirdy, *The Lawyer as Apprentice: Legal Education in Eighteenth Century Massachusetts*, 28 J. LEGAL EDUC. 124, 125 (1976).

18. ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 3 (1983).

19. *Id.* In fact, the earliest American law schools were merely outgrowths of apprenticeship training by practitioners who were particularly skilled, or particularly popular, as teachers. *Id.*

deed, even after the Revolution and well into the nineteenth-century, "the chief method of legal education was the apprenticeship served in the office of a lawyer, although there were still some isolated instances of self-directed studies and, on fairly rare occasions, of attendance at the Inns of Court in London."²⁰

What were the character and the quality of the apprenticeship training received by the aspiring lawyer in the eighteenth century?

Ideally, the legal clerkship system placed the student in an environment of law where education was a total and many faceted experience. He would learn by copying documents, transcribing contracts, and performing the other mundane but necessary duties of a law office. He would learn by listening to his fellow students, his teacher and other members of the bar. He would learn by attending court and paying careful attention to all that transpired there. He would learn by reading the law books available to him and by taking copious notes in a commonplace book. In all aspects of his training he should [sic] be guided by his mentor, a lawyer versed in the law and concerned with the education of his charges. In this way, it was assumed that the clerk would learn both the practical and theoretical aspects of the law, leaving his teacher's office after the prescribed number of years a complete lawyer as well as a man steeped in the values of his profession.²¹

In practice, the quality of the training that the apprentices received in their mentors' law offices varied greatly.²² According to Anton-Hermann Chroust:

As a rule, [the apprentice] commenced his studies whenever he wished, studied as much or as little as he pleased, and more often than not was wholly on his own as far as learning the law was concerned. He could read—and in some instances was expected to read—whatever lawbooks were to be found in the office. But he received little formal instruction: theory was hardly ever discussed, and legal principles were seldom expounded. There were no definite requirements or standards, nor was there a systematic program of study. The lawyer who took in "students" might be a conscientious and efficient man who tried to educate them to the best of his ability, or he might be indifferent or lazy and let them shift for themselves.²³

20. 2 CHROUST, *supra* note 11, at 173-74.

21. McKirdy, *supra* note 17, at 127-28. "Commonplacing" referred to the tedious practice of alphabetically abridging what the apprentice read in the office's law books. *Id.* at 130.

As a matter of practice, the colonial American apprentice often entered into a formal agreement with his mentor and paid him a fee for the training received. In return, the lawyer promised to train the apprentice in the law and, sometimes, to provide room and board to his clerk. In addition to being a system of training practitioners, the apprenticeship system was a device to keep the bar small and to keep senior lawyers "in firm command." LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 97 (2d ed. 1985).

22. FRIEDMAN, *supra* note 21, at 97-98.

23. 2 CHROUST, *supra* note 11, at 175.

Charles R. McKirdy concurred in this assessment, stating that "the ideal of legal training and its Eighteenth Century reality bore little resemblance to one another."²⁴ Thus, the quality of the apprentice's training was highly variable, often suffering from a lack of attention to legal theory, from a deficiency in the mentor's teaching style (and dedication to this task), and from the exploitation of the apprentice in his performance of tedious and routine office tasks.

By the middle of the nineteenth century, the United States had experienced a resurgence in formal university-provided legal education. This resurgence, in large measure, came in reaction to the inadequacies of the apprenticeship system as a means of training lawyers.²⁵ At the end of the nineteenth century, states gradually restored or increased their apprenticeship or clerkship requirements for admission to the bar; time spent engaged in pursuing legal education in a university, however, counted as time spent clerking in a law office for these purposes.²⁶ Law school had become a suitable alternative to law-office training as a mode of acquiring a legal education.

By the early twentieth century, the apprenticeship system was irrevocably declining as a means of legal education in America.²⁷ In 1913, the American Bar Association (ABA) formally asked the Association of American Law Schools (AALS) to accept the ABA's recommendation that law students be required to serve a one-year, postlaw school clerkship in a law office prior to admission to the

24. McKirdy, *supra* note 17, at 128. Stevens noted the continued existence of this problem in the nineteenth century. Referring to law-office apprenticeship as it existed in the first half of that century, he concluded:

At its best, apprenticeship at that time was all that clinical legal education is claimed to be today: close supervision of a student by his principal in real-life encounters. Yet few apprenticeships worked out that way. Indeed, even when principals were diligent, the chances of any one office offering a good all-around training were small.

STEVENS, *supra* note 18, at 24 (citation omitted).

25. See STEVENS, *supra* note 18, at 21-22. According to Stevens,

New York University deplored the office training where the students "generally pursue their studies unaided by any real instruction, or examination, or explanation. They imbibe error and truth, principles which are still in force with principles which have become obsolete; and when admitted to practice, they find, often at the cost of their unfortunate clients, that their course of study has not made them sound lawyers or correct practitioners."

Id. at 22 (quoting an uncited source). Admittedly, the comments of a nineteenth-century law school regarding its competition—law office apprenticeship as a means of training—are unlikely to be entirely free of bias.

26. *Id.* at 95.

27. *Id.* at 106 n.32.

bar. The AALS refused, and the matter was dropped.²⁸ Still, until the turn of this century, the only legal education that "the vast majority of the legal profession" received was through law-office apprenticeship.²⁹ In 1914, when Josef Redlich delivered his report on the common law and the case method to the Carnegie Foundation for the Advancement of Teaching, he pointed out that a great number of American lawyers still received all or most of their pre-admission legal education as apprentices to practicing attorneys.³⁰ Well into the present century, Roscoe Pound recalled nostalgically that apprenticeship had provided valuable professional socialization:

It is a gain that the American university law school has put legal education in an atmosphere of culture and scholarship. It is a loss that it has broken the continuity of the professional tradition, the tradition of what is done and what is not done by the good lawyer, a tradition handed down from lawyer to apprentice almost from the beginnings of our law.³¹

Throughout the twentieth century, the move away from law-office apprenticeship and toward law school education has continued at a rapid pace. By 1951, only five states—Delaware, Pennsylvania, Rhode Island, Vermont, and New Jersey—required a law-office internship as a condition precedent to admission to their bars.³² By 1969, only fourteen states allowed any portion of their required pre-admission legal education to be undertaken in a law

28. *Id.* at 120.

29. *Id.* at 24. The late nineteenth-century movement away from law-office apprenticeship and toward law school training as the preferred means of acquiring a legal education was part of a more general push by the organized bar to raise admission standards. *Id.* at 24-28. In 1879, the ABA stated:

"[T]here is little, if any, dispute now as to the relative merits of education by means of law schools and that gotten by mere practice or training in apprenticeship as an attorney's clerk. Without disparagement of mere practical advantages, the verdict of the best informed is in favor of the schools."

Id. at 112 (quoting the ABA)(citation omitted).

30. JOSEF REDLICH, *THE COMMON LAW AND THE CASE METHOD: A REPORT TO THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING* 7 (1914).

31. Roscoe Pound, *The University and the Legal Profession*, 7 OHIO ST. L.J. 3, 26 (1940).

32. Marion R. Kirkwood, *Requirements for Admission to Practice Law—Statutes, Rules, Regulations, and Correspondence Schools, Law Office Study, Private Study*, 20 B. EXAMINER 18, 42 (1951). In 1951, 35 states permitted law-office study as an alternative to law school training in satisfaction of the legal education requirements for bar admission, although one of these states required a portion of this study be undertaken in a law school. *Id.* at 31. Additionally, in 1951, private, unsupervised study of law was permitted to satisfy six states' bar admission requirements, *id.* at 30, while correspondence school legal education was permitted for this purpose in eight states. *Id.* at 32-33.

office.³³ As of 1989, only two states—Delaware and Vermont—required some period of law-office internship as a condition for admission to their bars,³⁴ and only seven states permitted either all or any portion of their pre-admission legal education requirement to be satisfied by study outside of law school.³⁵ Present-day America has almost completely moved away from requiring (or even permitting) law-office training in partial satisfaction of the education prerequisites for admission to the practice of law and from requiring a prelicensure legal internship as a supplement to other legal education prerequisites.

III. MANDATORY LAW-OFFICE TRAINING IN CONTEMPORARY ENGLAND AND CANADA

In 1973, then-Chief Justice Warren E. Burger expressed his belief that a large portion of the American trial bar was incompetent.³⁶ As a possible model for a solution to this problem, Burger cited, with admiration, the English legal system's method of training its barristers.³⁷ According to Burger, American law schools generally failed to provide adequate skills training to their students.³⁸ He called for two-year law schools with an optional third year of school reserved for training in trial advocacy skills for those who desired to become litigators; after this third year, aspiring trial lawyers would then engage in a period of apprenticeship under the guidance of experienced litigators.³⁹ An examination of the English system of apprenticeship, so admired by Burger, follows, along with a look at its Canadian offspring.

A. *England*

There are three stages of legal education in England.⁴⁰ The first stage is academic, in which the law student is trained in legal

33. STEVENS, *supra* note 18, at 219-20 n.24.

34. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR & THE NATIONAL CONFERENCE OF BAR EXAMINERS, COMPREHENSIVE GUIDE TO BAR ADMISSIONS REQUIREMENTS 12-14 chart IV (1991). Delaware requires a five-month law office internship, while Vermont's requirement is six months in a law office. *Id.* at 13-14.

35. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES, FALL, 1989, LAW SCHOOL AND BAR ADMISSION REQUIREMENTS 75-82 tbl. (1990).

36. Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REVIEW 227, 234 (1973).

37. *Id.* at 228-30.

38. *Id.* at 232.

39. *Id.*

40. Teeven, *supra* note 3, at 357.

theory at a university.⁴¹ During this stage, the law student attends lectures and tutorials, with little, if any, use made of the case method of instruction;⁴² at this point, the training is the same for aspiring barristers and aspiring solicitors.⁴³ The second stage of English legal education is vocational;⁴⁴ in this phase, the aspirant receives specific skills training in a course taught by, in the case of barristers-in-training, the Inns of Court or by, in the case of solicitors-in-training, the Law Society's College of Law or one of seven other polytechnic schools throughout the country.⁴⁵ The third stage of an aspirant's training is a period of apprenticeship: for barristers, it is one year of "pupillage" with a "master," who is a barrister having at least five years of practice experience;⁴⁶ for solicitors, it is a period of "articled clerkship" in the office of an experienced solicitor, lasting between two and two and one-half years.⁴⁷

41. See *id.* In England, although aspiring barristers and solicitors usually take their undergraduate degrees in law, there is no absolute requirement that they do so. Aspirants' undergraduate degrees may be in other disciplines, though for such persons an additional year of academic coursework in law, followed by the Common Professional Examination (CPE), is required. See 1 THE ROYAL COMMISSION ON LEGAL SERVICES, FINAL REPORT, 616, 630 (1979) [hereinafter ROYAL COMMISSION]. For those aspirants who are over 25 years of age and who lack an undergraduate degree, this period of academic coursework in law is two years, followed by the CPE. *Id.* at 617. For the small number of nondegreed entrants who are under 25, substantially different educational, vocational, and apprenticeship requirements obtain. See *id.* at 617, 631.

42. See Marilyn J. Berger, *A Comparative Study of British Barristers and American Legal Practice and Education*, 5 NW. J. INT'L L. & BUS. 540, 563-64 (1983).

43. *Id.* at 564.

44. See *id.*; Teeven, *supra* note 3, at 365-67.

45. See Teeven, *supra* note 3, at 365-67. Teeven states that the skills course for both aspiring barristers and aspiring solicitors lasts nine months, *id.* at 365, while Berger states that the course for aspiring barristers (her article does not deal with solicitors) lasts one year. Berger, *supra* note 42, at 564.

According to Berger, the vocational stage of barrister training can itself be divided into five substages, the first of which is the practice skills course attended by rising barristers at the Inns of Court School of Law in London. Subsequent substages include participation in practical exercises taught by practitioners, dining ("keeping terms") at the Inns of Court (an age-old tradition retained mainly for the purpose of fostering collegiality), passing the bar examination, and pupillage (apprenticeship) for one year with an experienced barrister. See *id.* at 564-65. Thus, Berger views the apprenticeship period as the ultimate substage of the vocational training phase, as opposed to a separate stage in its own right. This difference in the manner of dividing the phases of English legal education is, however, largely academic.

46. Teeven, *supra* note 3, at 368; see Berger, *supra* note 42, at 565; David Newell & Cora S. Feingold, *Chief Justice Burger and the English Experience: Suggested Reforms of American Legal Education*, 53 NOTRE DAME LAW. 934, 937 (1978).

47. Teeven, *supra* note 3, at 370; Andrew W. Green, *Legal Education in England*, 28 J. LEGAL EDUC. 137, 139 (1976). The period of articled clerkship lasts two years for those

In theory, the apprenticeship stage of legal education for new barristers and solicitors provides valuable, hands-on legal experience. In practice, the results often fall short. Thus, there has been considerable criticism leveled at the apprenticeship system.

In the case of pupillage, the pupil suffers from a lack of payment during the initial portion of his or her apprenticeship, from exposure only to the master's style and area of practice, and, all too often, from exploitation and a lack of proper supervision.⁴⁸ In addition, because the pupillage system is not directly supervised either by the universities or by the Inns of Court, there are no uniform standards for training.⁴⁹ As a result, there is wide variance in the quality of training received by each pupil.⁵⁰ David Newell and Cora S. Feingold note that "[t]he theoretical value of an apprenticeship period acknowledged by [Chief Justice] Burger has been minimized in practice as a result of the professional bodies' failure to live up to their responsibilities to administer and supervise such a period of training properly."⁵¹

Even its harshest critics, however, admit that pupillage has some important benefits: it exposes pupils to the litigation process engaged in by practicing barristers (that is, it gives the pupil hands-on experience), and it provides the neophyte with a preliminary period of training within which to determine whether to continue with a career at the bar.⁵² Nevertheless, in response to Chief Justice Burger's call for the training of American trial lawyers along the English lines, Marilyn J. Berger concludes:

Reliance on the English model of legal education *in toto* would be a mistake. Rather than regarding British legal education as the total cure,

would-be solicitors who are university graduates and who have passed or are exempt from Part I of the solicitor's examination, and two and one-half years for those who have neither passed nor are exempt from Part I of the examination. *Id.*

48. Berger, *supra* note 42, at 577-78.

49. *Id.* at 578.

50. *See id.*

51. Newell & Feingold, *supra* note 46, at 939. Newell and Feingold's criticisms are directed at both pupillage and articulated clerkship. The authors note that there have been numerous proposals in England for the creation of an "Independent Legal Training Board" to oversee the professional training of barristers and solicitors. "The Board would ensure that if apprenticeship training is preserved within the English system it will be properly regulated and supervised." *Id.* at 938. Appropriate independent oversight should be an integral part of any required legal internship program in the United States. *See infra* text accompanying note 130; *infra* notes 131-32, 138, 149 and accompanying text.

52. Berger, *supra* note 42, at 579. Similar benefits are present in articulated clerkships. The Royal Commission on Legal Services opines that pupillage generally works well, though, admittedly, such training "must be done effectively, or it is useless." 1 ROYAL COMMISSION, *supra* note 41, at 643-44.

it may be more helpful to use the British model as an aid in focusing on specific issues such as integration of academic theory and practice skills and the proper setting in which such training should take place.⁵³

The practice of articulated clerkship suffers from most of the infirmities that plague pupillage. Clerks, though not unpaid, are generally poorly paid⁵⁴ and overworked.⁵⁵ Clerkships are frequently difficult to obtain,⁵⁶ and clerks are too often employed in boring, tedious work—and receive inadequate instruction even in that work.⁵⁷ For the solicitor acting as the principal, clerks are often burdens who are capable of rendering little useful service; consequently, fewer qualified solicitors are willing to act as principals.⁵⁸

While acknowledging that clerkship can be a valuable experience, Kevin M. Teeven avers that “too often the apprenticeship is a boring, narrow view of the practice and a waste of time. Nevertheless, it is an inexpensive way to do what American law firms in effect finance during the young lawyer’s first year after passing the bar exam.”⁵⁹ Andrew W. Green asks “whether much would actually be changed in practice by the outright abolition of the articulated clerkship,” in light of the fact that most new solicitors, during their initial years in practice, do in fact go to work for experienced solicitors.⁶⁰ The Royal Commission on Legal Services takes the opposite view: “It is generally agreed that the system of articles gives a good quality of training, if properly conducted. Criticisms we received related, not to the *concept* of articles, but to failure to *operate* the system properly.”⁶¹ The English system of apprenticeship for new barristers and solicitors, while possessing a number of strengths, is far from ideal in practice. Admittedly,

53. Berger, *supra* note 42, at 576.

54. Teeven, *supra* note 3, at 370-71; Green, *supra* note 47, at 144.

55. Green, *supra* note 47, at 144.

56. Teeven, *supra* note 3, at 370.

57. Green, *supra* note 47, at 144.

58. *Id.*

59. Teeven, *supra* note 3, at 371-72. E. Gordon Gee and Donald W. Jackson echo these sentiments: “In certain instances pupillage and articles are no doubt excellent devices, but, with no effective quality controls over either, such a fortunate outcome is a random event.” E. Gordon Gee & Donald W. Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 1977 B.Y.U. L. REV. 695, 789 [hereinafter Gee & Jackson, *Bridging the Gap*].

60. Green, *supra* note 47, at 178. Green also notes, “In any event, for both branches of the profession, since apprenticeship as currently practiced seems of little educational value, and since it cannot be regulated and supervised effectively, both the articulated clerkship and pupillage seem the useless survivals of a medieval system of apprenticeship.” *Id.*

61. 1 ROYAL COMMISSION, *supra* note 41, at 647 (emphasis added). The Commission conceded “that, if the system of articles was to be preserved, considerable improvements were required.” *Id.*

it must be used only with some caution as a model for any similar system in American legal training.

B. Canada

Articled clerkship, or "articling," is also a requirement for admission to Canada's provincial law societies.⁶² Articling is one of four constituent parts of Canadian legal education; these parts are: (1) academic law training in a college or university, (2) the articling period, (3) law-society operated bar admission programs (which are often administered concurrently with articling), and (4) continuing postadmission professional education.⁶³ The length of the articling period varies from six months in Quebec to twelve months in most common law jurisdictions.⁶⁴ As was formerly true in England, articling was once the exclusive means of entering law practice; until 1959, it was still the predominant means of entrance.⁶⁵

The procedure for articling in Ontario is probably representative of most Canadian jurisdictions. After law school graduation, the aspiring legal practitioner enters into a twelve-month articling period in the office of a practitioner.⁶⁶ After that period, the aspirant pursues a six-month practical skills course before seeking admission to the bar.⁶⁷ In the province of Ontario, all articling proceeds on a regular September-to-August schedule, with the practical skills course immediately following the articling period, so that all clerks begin and end these phases of their legal training at the same time.⁶⁸ This schedule conforms nicely to the academic calendar and has the advantage of that calendar's uniformity.

According to W. Brent Cotter, "[t]he articling period offers an almost ideal learning environment for a student proposing to enter

62. W. BRENT COTTER, PROFESSIONAL RESPONSIBILITY INSTRUCTION IN CANADA: CO-ORDINATED CURRICULUM FOR LEGAL EDUCATION 2-50 (1992). The only exception to the articling requirement is for admission to Quebec's *Chambre des Notaires*. *Id.* Unlike England, Canada makes no formal distinction between barristers and solicitors. DAVID A.A. STAGER & HARRY W. ARTHURS, LAWYERS IN CANADA 19-20 (1990).

63. COTTER, *supra* note 62, at 1-4.

64. *Id.* at 1-5, 2-50. At page 1-5, Cotter states that the articling period in Quebec is six months in duration, though, on page 2-50, he says that it is eight months. Six months is the correct duration.

65. *Id.* at 2-50. As discussed above, articling's American sibling, apprenticeship, was also once the predominant means of training for the bar in this country. See *supra* notes 16-20 and accompanying text.

66. Richard J. Roberts, *Ontario's Bridge . . . The Gap Course*, 36 B. EXAMINER 16, 17 (1967).

67. *Id.*

68. *Id.*

the legal profession."⁶⁹ In theory, articling should teach the clerk "how to apply substantive law and how to meet the needs of the client," all under the tutelage of an experienced practitioner.⁷⁰ Articling should be "an ideal context for practical learning about law and the practice of law" for the following reasons: (1) it is "real life", (2) it allows the clerk to work individually with an experienced practitioner, (3) there is generally a wide variety of legal work performed in the practitioner's office, (4) there is often the opportunity to work with more than one practitioner, and (5) it presents the opportunity to observe practicing lawyers performing the work of their profession.⁷¹

In practice, articling in Canada falls short of its theoretical promise.⁷² "Unfortunately, much of its promise is wasted. This is not due to a lack of understanding of the objectives of articling but to a failure to deliver on them."⁷³ This failure has prompted many in the profession to call for the abolition of articling.⁷⁴

The shortcomings of articling as practiced are perceived to be legion. First, the clerk is often insufficiently informed about expectations and objectives of the program.⁷⁵ Second, the clerk often receives insufficient direction or supervision from his or her principal.⁷⁶ Third, there may be a lack of adequate interaction and

69. COTTER, *supra* note 62, at 3-26.

70. James E. Lockyer, *Towards a Restructuring of the Office Training Component of Legal Education*, 36 NEW BRUNSWICK L.J. 175, 175 (1987). Lockyer asserts that articulated clerkship has certain theoretical advantages over other forms of practical training:

Professional legal training courses, bar admission courses, seminars and workshops have limitations, particularly where the objective is instruction in and retention of skills. . . . A period of in-office training is capable of providing more supervision for a longer period. It also permits supervision by the most appropriate instructor, for only those who practice law day-in and day-out can recognize the problems, pitfalls and practical solutions which must be communicated to the student. Only an experienced practitioner has the full range of skills which the student must be taught. Only a practitioner can provide a realistic view of the practice of law.

Similarly, the most suitable laboratory for the teaching of legal skills is the modern law office. . . . Nothing can replace effective work in the real environment in which the student is expected to perform after admission.

Id. at 176-77.

71. COTTER, *supra* note 62, at 2-52. American legal internship programs would also, at least in theory, possess these same strengths.

72. *Id.*; see Lockyer, *supra* note 70, at 176.

73. COTTER, *supra* note 62, at 3-26. Cotter's sentiments echo those of the Royal Commission on Legal Services regarding English articles: the failure of the system is in its execution, *not* in its theory. See *supra* note 61 and accompanying text.

74. COTTER, *supra* note 62, at 2-52.

75. Lockyer, *supra* note 70, at 177.

76. *Id.*

communication between clerk and principal.⁷⁷ Fourth, the clerk may not get sufficient evaluation, constructive criticism, or other feedback from his or her principal.⁷⁸ Fifth, there is often a lack of exposure to different areas of practice, including law-office administration and management.⁷⁹ Sixth, there may be a tendency to concentrate on only one or two areas of practice during the course of the articling period.⁸⁰ Seventh, clerks often suffer from a lack of a structured program and consistency of instruction.⁸¹ Eighth, clerks too frequently are called upon to perform menial and mundane tasks.⁸² Ninth, there may be a dearth of truly qualified, interested, and experienced practitioners to act as principals.⁸³ James E. Lockyer notes that these shortcomings have prompted abolition of office training as a part of pre-admission legal education in most American jurisdictions, in New Zealand, and in some Australian jurisdictions.⁸⁴ Although he does not go so far as to advocate the abolition of articulated clerkships, Lockyer has joined the chorus of calls for significant reform of the practice.⁸⁵

As is true of the English system of law-office apprenticeship, the Canadian practice may hold promise as a model for in-office American legal training, but its failings should serve as a cautionary example for American jurisdictions. Any American jurisdiction

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* at 178.

81. *Id.*

82. *Id.* Cotter echoes this last failing, noting that, due possibly to economic realities, clerks are often used in a manner that is inconsistent with their best educational interests. For example, one study found that clerks in Nova Scotia spent at least 60% of their time doing legal research at the expense of their broader practical legal training. COTTER, *supra* note 62, at 2-54.

83. COTTER, *supra* note 62, at 2-55 to 2-56.

84. Lockyer, *supra* note 70, at 176 n.3. The Australian experience with articulated clerkships is, in many respects, similar to that of England and Canada, except that most Australian jurisdictions have gone further in their efforts to reform the system. In Australia, as in England and Canada, there has been much dissatisfaction with this system of apprenticeship. In response to this dissatisfaction, most Australian jurisdictions have established practical legal training courses as optional alternatives to, or as mandatory substitutes for, articulated clerkships as a means of skills education and as a prerequisite for admission to practice. 3 DENNIS PEARCE ET AL., AUSTRALIAN LAW SCHOOLS: A DISCIPLINE ASSESSMENT FOR THE COMMONWEALTH TERTIARY EDUCATION COMMISSION 861 (1987). For example, effective as of 1980, New South Wales abolished articling entirely. David Ross, *Legal Skills Courses in Australia—Their Need, Their Value and Their Prospects*, 49 AUSTL. L.J. 327, 327 (1975); Lockyer, *supra* note 70, at 176 n.3.

85. Lockyer, *supra* note 70, at 178-87.

considering the imposition of an internship requirement on all bar applicants should take into account the English and Canadian experiences in this regard and should profit from those nations' mistakes. The issue, of course, is how best to profit from these mistakes—how best to design an internship program that draws on the advantages of such a system of training, while avoiding, or at least minimizing, its pitfalls. This central issue is explored below in Section V of this Article.

IV. RECENT AMERICAN THINKING ON PRELICENSURE LEGAL INTERNSHIP REQUIREMENTS

For years, many of those who have thought and written about legal education in America have commented on the need for increased practice skills training for law students and new lawyers.⁸⁶ In a 1977 article, Robert A. Fairbanks posed the problem caused by new attorneys' inadequate possession of practice skills as follows:

The legal profession well knows, and unfortunately accepts, that just-admitted lawyers are unskilled and require continued supervision and assistance for a substantial period before attaining professionally acceptable competence. This state of initial professional incompetence may well be overcome with a few years of experience, but all lawyers, especially those in private practice, should be capable of practicing without supervision. Just-admitted lawyers, however, are not now held to that standard; jurisdictional licensing authorities endorse their com-

86. For example, a recent ABA task force statement exhaustively discussed the fundamental lawyering skills and professional values "with which every lawyer should be familiar prior to assuming the full responsibilities of a member of the legal profession—i.e., prior to accepting the ultimate responsibility for representing a client or . . . for making professional judgments or giving legal advice." AMERICAN BAR ASSOCIATION TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, STATEMENT OF FUNDAMENTAL LAWYERING SKILLS AND PROFESSIONAL VALUES 2 (March 17, 1992) (revised draft on file with author). These fundamental lawyering skills include competencies in the following areas: (1) problem solving, (2) legal analysis and reasoning, (3) legal research, (4) factual investigation, (5) communication (oral and written), (6) counseling, (7) negotiation, (8) litigation and alternative-dispute resolution procedures, (9) organization and management of legal work, and (10) recognizing and resolving ethical dilemmas. *See id.* at 6-9. The fundamental professional values are: (a) provision of competent representation, (b) striving to promote justice, fairness, and morality, (c) striving to improve the profession, and (d) professional self-development. *See id.* at 10-11. The task force statement, however, did not address the issues of how and where such fundamental skills and values should be acquired; by its own admission, it "does not contemplate that a new member of the profession must necessarily become acquainted with the enumerated skills and values while in law school or even before he or she is admitted to the bar." *Id.* at 2.

petency to the public by granting an unrestricted license and allowing them to "hang out their shingles" as sole practitioners.⁸⁷

Fairbanks surveyed practicing attorneys in the Oklahoma City area regarding their attitudes about the competence of new lawyers; he received one hundred forty-four completed questionnaires in response.⁸⁸ Seventy-five percent of the respondents disagreed with the statement that "new lawyers today are competent by professional standards to practice law without supervision or assistance from experienced lawyers immediately after admission to the Bar."⁸⁹ In response to the question, "[a]fter admission to the Bar, generally how long does it take a new lawyer to become competent to practice law without supervision or assistance from an experienced lawyer?," 18.8 percent of the responding attorneys replied that the period was from zero to one year, 50.0 percent responded that the period was from one to two years, 18.8 percent responded that the period was from two to four years, and 12.5 percent responded that the period exceeded four years.⁹⁰ From this survey, one inescapably draws the conclusion that practitioners themselves recognize that new lawyers possess inadequate practice skills. This conclusion is far from surprising.

A major debate in this area has centered upon the appropriate venue for imparting the necessary skills training: what is the proper allocation of responsibility between the academy and the profession in this respect? As early as 1914, when Redlich issued his report on the case method of instruction, he noted Harlan Fiske Stone's opinion that "no theoretical mode of teaching can furnish the student with practical routine and experience, such as are gained

87. Robert A. Fairbanks, *The Failure of American Legal Education: A Recommendation for an Integrated Legal Education Program*, 12 TULSA L.J. 627, 627-28 (1977) (citations omitted). Fairbanks's own solution to this problem is to add another seven months to the law school program; students would spend this additional time participating in closely supervised clinical work. *Id.* at 645-49.

88. *Id.* at 630 n.12.

89. *Id.* at 631 tbl. 1.

90. *Id.* at 631 tbl. 2. As an interesting aside, when asked "how many years [sic] experience do you expect it would take [for a new lawyer] to attain the degree of competence you would require of a lawyer to handle your personal legal matters?," the respondents were more solicitous of their own legal needs than those of their clients: only 13.3% responded that it would take two years or less, compared with a total of 68.8% who believed that new lawyers become otherwise competent to practice without supervision in that same time period. *Id.* at 631 tbls. 2, 3. In addition, 53.3% of the respondents believed that a new lawyer needs more than four years of experience before they would let the neophyte handle their personal legal matters, compared with only 12.5% who responded that new lawyers require more than four years to become otherwise competent to practice without supervision. *Id.* at 631 tbls. 2, 3.

only by immediate participation in legal activity in the law office."⁹¹ A related debate revolves around the best method or methods for imparting practice skills training. This Section will examine these debates and discuss their implications for prelicensure legal internship requirements.

A number of studies undertaken in the course of the last two decades have found that law schools were failing to meet an important need for skills training. Leonard L. Baird's survey of 1,600 graduates from six different law schools revealed that many respondents, particularly those engaged in real estate, personal injury, and family law practices, believed that their law school training had been deficient in the area of practice skills.⁹² E. Gordon Gee and Donald W. Jackson, in their survey of several recent studies of legal education, concluded that law schools could and should be doing more to provide necessary practice skills education.⁹³ In his review of two studies of the Chicago Bar, Stewart Macaulay found that these studies "reveal[ed] a gap between legal education and the practice of many lawyers";⁹⁴ in other words, law schools were not providing many of the practice skills that attorneys found necessary. And in his report on some of these same studies, Murray L. Schwartz noted that, while practicing lawyers were generally satisfied with their legal education, they believed that their law schools had not done a good job of teaching necessary practice skills:⁹⁵

If there is a major problem in American legal education, it has to do with the education of those lawyers who enter the "people-related" practice [i.e., the solo and small law firm practices which tend primarily

91. REDLICH, *supra* note 30, at 21.

92. Leonard L. Baird, *A Survey of the Relevance of Legal Training to Law School Graduates*, 29 J. LEGAL EDUC. 264, 292-94 (1978). Baird found that the skills or knowledge which these attorneys found most important to them in their work were: (1) the ability to analyze and synthesize law and facts, (2) the ability to be effective in oral communication, (3) the knowledge of statutory law, (4) the ability to write effectively, (5) the ability to conduct research, (6) the ability to counsel clients, (7) the ability to negotiate, and (8) the ability to draft legal documents. *Id.* at 273-74.

93. E. Gordon Gee & Donald W. Jackson, *Current Studies of Legal Education: Findings and Recommendations*, 32 J. LEGAL EDUC. 471, 504 (1982) [hereinafter Gee & Jackson, *Current Studies*].

94. Stewart Macaulay, *Law Schools and the World Outside Their Doors II: Some Notes on Two Recent Studies of the Chicago Bar*, 32 J. LEGAL EDUC. 506, 512 (1982). Macaulay stated that many law professors, when confronted with this "gap," would assert that there is, and should be, a division of labor in legal education between the law schools and the profession, with the former responsible for inculcating knowledge of legal analysis and the latter responsible for inculcating practice skills. *See id.* at 522.

95. *See* Murray L. Schwartz, *The Reach and Limits of Legal Education*, 32 J. LEGAL EDUC. 543, 553-54 (1982).

to represent individuals and small businesses], because neither their law schools nor their practice context may afford the practical and professional responsibility training that is furnished in the "wealth-related" practice contexts [i.e., the larger law firm practices which tend primarily to represent corporate clients].⁹⁶

Thus, as late as the early 1980s, there existed at least the perception of an unmet need for practice skills training as a component of legal education. The question, then, becomes one of how best to allocate the responsibility for supplying such training between the law schools and the practicing bar.⁹⁷

96. *Id.* at 567. Indeed, one of the strongest arguments in favor of imposing a one-year prelicensure legal internship requirement on all law school graduates is the fact that graduates who immediately enter such "people-related" law practices may not have received adequate practice skills training either in law school or during the first year of solo or small-firm practice. After all, many, if not most, law school graduates do not immediately enter the large-firm practices where skills training is more likely to be available in some form. Even for those individuals who, immediately after graduation, do secure positions with large law firms, there is no guarantee, given the current state of affairs, that adequate practice skills training awaits them in their first year of practice.

97. The essence of this debate is captured in two statements associated with Roger C. Cramton, which, taken together, seem to evidence some ambivalence in this matter. In 1982, Cramton stressed his belief that "it is unrealistic to expect the law schools to turn out a fully finished product capable of handling any legal task." Roger C. Cramton, *The Current State of the Law Curriculum*, 32 J. LEGAL EDUC. 321, 323 (1982) [hereinafter Cramton, *Law School Curriculum*]. However, in the so-called "Cramton Report" of the ABA Section of Legal Education and Admissions to the Bar, there is a recommendation that "law schools should provide instruction in those fundamental skills critical to lawyer competence." AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 3 (1979) [hereinafter TASK FORCE REPORT]. Admittedly, these two statements are not inconsistent, for one can well imagine law schools providing such skills instruction without also believing that the instruction would necessarily result in turning out "fully finished product[s] capable of handling any legal task." Cramton, *Law School Curriculum*, *supra* at 323. Indeed, an expectation to the contrary would itself probably be "unrealistic." *Id.*

As an important digression, it should be noted that there is some disagreement as to the meaning of "lawyer competence" and the skills necessary for such competence. The Cramton Report distinguishes between a lawyer's "competence," which it defines as "an individual's capacity to perform a particular task in an acceptable manner," and his or her "performance," with poor performance defined as "the failure to meet a satisfactory standard in some task undertaken for a client." TASK FORCE REPORT, *supra* at 9.

The Cramton Report lists three components of lawyer competence: (1) possession of certain fundamental skills, (2) knowledge about law and legal institutions, and (3) ability and motivation to apply, with reasonable proficiency, both the knowledge and skills to undertaken tasks. *Id.* "Fundamental skills" include the ability to: analyze legal problems; perform legal research; collect and sort facts; write effectively; communicate effectively orally; perform lawyering tasks requiring communication and other interpersonal skills such as interviewing, counseling, and negotiation; and organize and manage legal work. *Id.* at 9-10. Knowledge about law and legal institutions involves both "knowledge about relevant

Those who call for a greater law school role in practice skills training have often clamored for increased availability of clinical legal education. Jerome Frank's now famous (and frequent) pleas for clinical education were contained in essays which expressed his belief that such education was superior to the case method as a means of educating future lawyers.⁹⁸ However, they were not the first of such pleas; Alfred Z. Reed had earlier suggested that law

law . . . and about the procedures, powers, and limits of legal institutions." *Id.* at 10. The ability and motivation to apply both knowledge and skills to the undertaken tasks requires: constructive work habits; personal integrity; attitudes and values such as conscientiousness, understanding the need to stay abreast of changes in the law, and appreciation of the limits of one's own competence; experience and judgment in choosing among alternatives; effectuating choices; and dealing with problems of professional responsibility. *Id.* at 10. For another opinion about what constitutes the fundamental lawyering skills that competent practitioners should possess, see *supra* note 86.

Cramton asserts that law schools' curricula fail to focus sufficiently on either theory or practice, with courses generally lacking both broad theoretical and practical value. He believes that courses should be moved off "this middle road" in the direction of legal theory and in the direction of putting doctrine to work in dealing with "customary legal tasks." Cramton, *Law School Curriculum*, *supra* at 331. In addition, he suggests that courses in lawyering skills be added to the curriculum. See *id.* This latter suggestion has been implemented at many law schools over the course of the past decade, particularly, though not exclusively, in the form of clinical courses. "Perhaps the most significant curricular development of the 1970s has been the clinical movement." Robert A. Gorman, *Legal Education at the End of the Century: An Introduction*, 32 J. LEGAL EDUC. 315, 317 (1982).

Alfred Z. Reed, in his milestone 1921 work, *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW*, describes the law office and the law school as separate centers of legal education training. See ALFRED Z. REED, *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW: HISTORICAL DEVELOPMENT AND PRINCIPAL CONTEMPORARY PROBLEMS OF LEGAL EDUCATION IN THE UNITED STATES WITH SOME ACCOUNT OF CONDITIONS IN ENGLAND AND CANADA* 280-87 (1921). The particular mission of the schools is the provision of theoretical legal training and the means to acquire theoretical legal knowledge after graduation. See *id.* at 286. Reed implies that the provision of practical training is largely the responsibility of the law offices. See *id.* at 280. Reed's work appeared in an era when clinical programs at law schools were virtually unknown.

98. See, e.g., Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933). Almost twenty years later, Frank was still beating the bushes for clinical legal education as a way to integrate theory and practice, opining that clinics were superior to internship requirements for this purpose because the latter artificially separated theoretical from practical education. See Jerome Frank, *Both Ends Against the Middle*, 100 U. PA. L. REV. 20, 30 (1951). Frank felt that law school clinics were also superior to internships from the standpoint of supervision and training because busy practitioners do not have the time to undertake these tasks properly. *Id.* at 31. While the former of these two assertions is debatable (and, even if true, would not be fatal to an internship program), the latter assertion must effectively be dealt with if any internship program is to be successful. Indeed, as has been discussed in Section III of this Article, mentors' lack of time for proper training of their charges is a major failing of the English and Canadian systems of legal apprenticeship.

schools add live-client clinics as part of their educational programs.⁹⁹ Reed also suggested that "a supplementary period of office work" be a prerequisite for bar admission.¹⁰⁰ Thus, Reed viewed both clinics and internships as valuable modes of skills training.

Recently, there have been additional demands for increased clinical training as a means of educating aspiring attorneys in practice skills.¹⁰¹ Bayless Manning has suggested an interesting hybrid of clinical and internship training. He proposes a two-year law school, teaching analytical and intellectual skills, followed by a one-year "lawyer school" run by the practicing bar, teaching the practice and specialty skills that are not primarily learned in law schools as currently constituted.¹⁰²

Another hybrid is the legal "externship" program described by Henry Rose.¹⁰³ Such programs allow law students to receive law school credit for work performed in extramural law practice settings.¹⁰⁴ According to Rose, externships have the following advantages over clinics: (1) they are less expensive, (2) they allow greater numbers of students to participate, and (3) they serve a quasi-placement function.¹⁰⁵ Given proper allocation of supervisory responsibilities between law schools and participating law firms, Rose believes that externships can provide much-needed practice skills training for law students.¹⁰⁶

Much sentiment has also been expressed in favor of mandatory legal internship as a superior means of imparting practice skills—superior, that is, to the type of training that law schools are capable of providing in the practice skills area. For example, as

99. REED, *supra* note 97, at 286-87.

100. *Id.*

101. See, e.g., Cramton, *Law School Curriculum*, *supra* note 97, at 331-32; Gee & Jackson, *Current Studies*, *supra* note 93, at 504; Gee & Jackson, *Bridging the Gap*, *supra* note 59, at 961-62. See generally William Pincus, *Clinical Training in the Law School: A Challenge and a Primer for the Bar and Bar Admission Authorities*, 50 ST. JOHN'S L. REV. 479 (1976).

102. Bayless Manning, *Law Schools and Lawyer Schools—Two-Tier Legal Education*, 26 J. LEGAL EDUC. 379, 382-83 (1974). His proposal is reminiscent of Canada's bar admission programs. See *supra* text accompanying notes 63-68.

103. Henry Rose, *Legal Externships: Can They Be Valuable Clinical Experiences for Law Students?*, 12 NOVA L. REV. 95 (1987).

104. *Id.* at 102.

105. *Id.* at 102-03.

106. *Id.* at 102-12. As noted throughout this Article, proper supervision by, and of, the participating attorney-mentors is a significant problem that any internship or externship program must address. See *supra* text accompanying note 76; *infra* notes 128-31 and accompanying text; see also Rose, *supra* note 103, at 104-06.

noted above, Reed called for some form of office training for rising lawyers for just this purpose.¹⁰⁷ During the 1950s, there were several proposals that internship requirements be imposed on those seeking admission to the bar. E. Blythe Stason's solution to the problem of practice skills education was a two-stage bar examination process.¹⁰⁸ Under this proposal, graduates of law schools would take the first bar examination immediately after graduation;¹⁰⁹ this first examination would cover the topics normally covered on bar examinations.¹¹⁰ Upon passage of this first examination, aspiring attorneys would have limited practice rights and would enter into a one-year internship in a law office.¹¹¹ After that time, aspirants would take a second bar examination covering practice skills and local law, and upon successful passage of this second test, they would be fully admitted to the practice of law.¹¹² In 1959, Robert A. Kessler called for a required internship along the lines of New Jersey's then-existing program.¹¹³ After reporting that the New Jersey bar "strongly supported" a pre-admission "clerkship,"¹¹⁴ Kessler concluded:

[T]he "limited practice" of an adequately supervised clerkship, reasonably compensated, or, in short, the "modern clerkship," . . . is not an unreasonable onus on the prospective licensee, and is an absolute necessity for the public. . . . The "modern clerkship" can . . . adequately fulfill . . . the obligation which the bar owes to the public of presenting to any client, even that of the newest licensee, a counsellor as well-equipped to handle his problems as a reasonable attempt can make him.¹¹⁵

107. REED, *supra* note 97, at 286-87; see *supra* text accompanying note 100.

108. E. Blythe Stason, *Legal Education: Postgraduate Internship*, 39 A.B.A. J. 463, 466, 520 (1953).

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* Stason renewed his call for a two-stage bar examination, with an intervening year of law office internship, in Panel Discussion, *Legal Internships*, 6 J. LEGAL EDUC. 504, 516-17 (1954) (remarks of E. Blythe Stason). In this same panel discussion, Judge Mark E. Lefever also called for a mandatory internship for bar applicants, analogizing legal practice to the medical profession:

Would you want a medical school graduate who had never even *witnessed* a surgical operation to perform an emergency appendectomy or other serious surgery upon you or one of your loved ones? Certainly not, yet under the training provided generally by the legal profession throughout the United States the public must submit to similar treatment at the hands of the inexperienced and untrained lawyer who has just been graduated from law school.

Id. at 506 (remarks of Mark E. Lefever).

113. Robert A. Kessler, *Clerkship as a Means of Skills-Training*, 11 J. LEGAL EDUC. 482, 501-02 (1959). The New Jersey internship requirement has since been abolished.

114. *Id.* at 490-91.

115. *Id.* at 501-02.

In more recent years, other commentators have continued to call for some form of mandatory legal internship. James W. Ely, Jr. has issued such a call, in part as an alternative to judicially- or legislatively-mandated law school course prerequisites for bar admission; he believes that it is a mistake to mandate such law school courses.¹¹⁶ Ely asserts that if the bar is concerned about the adequacy of the practice skills training of its new lawyers, an internship period is a superior means of ensuring such training.¹¹⁷ Robert S. Redmount has suggested a two-track program of legal education: one track consisting of two years of law school followed by a one-year practice internship, and the other track consisting of three years of law school (for those who seek more advanced legal education) also followed by a one-year practice internship.¹¹⁸ In the mid-1970s, Michael I. Sovern proposed a "2-1-1" plan of legal education: two initial years of law school, followed by a one-year law-office internship, and concluding with one more year in law school.¹¹⁹ In Sovern's opinion, the final law school year would give the student an opportunity to specialize in an area of law and to integrate legal theory with the practical experience derived from the internship.¹²⁰ In short, over the years, many legal educators have called for the imposition of an internship requirement on those seeking admission to the practice of law.

116. James W. Ely, Jr., *Through a Crystal Ball: Legal Education—Its Relation to the Bench, Bar, and University Community*, 21 TULSA L. J. 650, 656-57 (1986). Ely believes that externally-mandated curricular requirements are misguided because: (1) it is not clear that these requirements will produce better lawyers, (2) the rapid changes in the law will make much of what is learned in law school obsolete anyway, and (3) these mandates tend to impose "narrowly professional courses" on law schools, reducing the discretion of law faculties and students to direct legal education by experimentation. *Id.*

117. See *id.* at 657-58 ("A time of intense supervision by practicing lawyers would assist the fledgling attorney far more effectively than could ever be the case in an academic situation where most professors do not engage in regular practice. Law school graduates might receive only a qualified license to practice until they had successfully completed an apprenticeship experience").

Ely's latter suggestion—that interns might receive only a limited license to practice—is similar to that of Stason. See *supra* text accompanying notes 108-12.

118. Robert S. Redmount, *The Future of Legal Education: Perspective and Prescription*, 30 N.Y.L. SCH. L. REV. 561, 574-78 (1985). In rejoinder, Quintin Johnstone rejects Redmount's suggestion, calling instead, for the strengthening of mandatory postadmission continuing legal education requirements. Quintin Johnstone, *Redmount Redacted*, 30 N.Y.L. SCH. L. REV. 591, 599 (1985). Johnstone favorably cites Northeastern University School of Law's cooperative legal education program as a valuable pre-admission means of implementing internship's skills-training goals. *Id.* at 598-99. The Northeastern program is further detailed later in this Section. See *infra* notes 121-27 and accompanying text.

119. Michael I. Sovern, *Training Tomorrow's Lawyers: A Response to the Chief Justice's Challenge*, 11 COLUM. J.L. & SOC. PROBS. 72, 76-78 (1974).

120. *Id.*

A program that looks very much like a legal internship, but which is conducted at the law school level during the second and third years of law study, already exists at Northeastern University School of Law. Northeastern calls its program "cooperative legal education."¹²¹ Under the program, Northeastern's entire first year class is, upon completion of the first year of law school, divided into two groups.¹²² During the course of the next twenty-four months of their legal education, the two groups alternate, in twelve-week segments, between full-time law-office placement and full-time law school attendance.¹²³ Among the strengths of Northeastern's cooperative legal education program are the following: (1) students are able to see how law is practiced in a number of different settings; (2) the incidence of part-time, unsupervised clerkships¹²⁴ during law school is greatly reduced; and (3) students get more out of law school classes in which practical legal problems arise.¹²⁵ Northeastern reports that its program is popular not only with its students, faculty, and administration, but with the bar and bench as well. Moreover, there is a lower occurrence of job change among graduates of the program.¹²⁶

Thus, Northeastern's cooperative legal education program is one apparently successful model for a legal internship program.¹²⁷ This is particularly true if one decides that legal internship should take place at the law school level. While I believe that any required internship training should occur, instead, at the postgraduate level, because of the advantage to the intern of having a full, uninterrupted twelve months of such training, Northeastern's cooperative legal education program nevertheless contains much that is useful and instructive for the type of legal internship that I propound below.

V. SOME SUGGESTIONS REGARDING MANDATORY PRELICENSURE LEGAL INTERNSHIP

There is no doubt that new lawyers need practice skills training; the only doubt concerns how best to impart such skills. As a

121. Telephone interview with Alice Alexander, Assistant Dean Northeastern University School of Law (Nov. 9, 1992).

122. Remarks of Donald H. Berman, in *LEGAL EDUCATION AND LAWYER COMPETENCY: CURRICULA FOR CHANGE* 123 (Fernand N. Dutilleul ed., 1981).

123. *Id.* at 123-24.

124. Northeastern's student clerks are supervised on site by attorneys who are approved by the law school and who file written reports on the clerks. *Id.* at 124.

125. *Id.*

126. *Id.*

127. Northeastern's program is not without its disadvantages. For example, despite supervision by the law school, there is still some disparity in the quality of the educational experience among the practice sites; furthermore, students may well emulate poor practices that they see on the job. *Id.* at 125.

means of practice skills training, a required, one-year, postgraduate, prelicensure internship for all bar applicants would be an effective device. As is true of clinical work, internship provides exposure to "real-life" experiences with live clients. Furthermore, it allows the intern to see experienced practitioners in action. Unlike clinics, however, internship provides *full-time* exposure to the practice of law over a significant period of time. Internship allows the practicing bar to train rising lawyers in practice skills—training that many observers believe practitioners are better suited to provide than are law schools.

As should be evident from the relevant experience of England and Canada, and from the United States' own history with law-office apprenticeships, legal internship requirements present significant pitfalls that must be avoided. Any required internship program must ensure that the interns are not exploited either through unreasonably low pay or through unreasonable amounts of tedious, routine work that has little or no educational value.¹²⁸ Furthermore, such a program must find ways to provide each intern with adequate supervision, training, and evaluation. The experienced attorney-mentors who participate in the internship program must be competent as supervisors, trainers, and evaluators of interns; mentors should receive appropriate instruction in this regard. Moreover, any internship program should ensure that its participants receive adequate exposure to various areas of legal practice, to fundamental practice skills, and, wherever possible, to the styles of a number of different attorneys. Further, all bar applicants must be guaranteed appropriate settings in which to complete their internships; that is, an adequate number of internship posts must always be available. Finally, there must be some practical means of administering and overseeing internship programs in order to make certain that adequate standardization among the individual internship sites will be achieved. All appropriate steps must be taken to ensure that the internship experience is a useful one, particularly for the intern, but also for his or her supervising attorney.

Northeastern University School of Law's successful cooperative legal education program¹²⁹ generally satisfies the criteria discussed in the preceding paragraph. This program could serve as a model, or at least as a point of departure, for a postgraduate, prelicensure

128. As all of those who have practiced law know, there is a certain amount of "tedious, routine" work involved in all aspects of the practice. Interns should be aware that such work comes with the territory; they need only be spared an *unreasonable* amount of such work.

129. See *supra* notes 121-27 and accompanying text.

legal internship program. Northeastern's cooperative program has an important characteristic in common with internship or residency programs in medicine and psychology—adequate oversight.¹³⁰ This maximizes the intern's opportunity to receive proper supervision, training, and exposure to various areas of professional practice, while minimizing the likelihood of exploitation resulting from overwork, low pay, and use in tedious or menial tasks.

Perhaps, then, one key to any successful, large-scale, mandatory legal internship program in present-day America is appropriate oversight by an entity with powers of accreditation. Aspiring attorneys should be required to complete a mandatory internship period in a duly accredited law office (or similar public or private setting where legal services are offered) that meets certain minimum standards designed to prevent exploitation of the interns and to maximize the educational value of the internship experience. The failure of any such law office or similar setting to meet the minimum standards should result in the prompt removal of its accreditation, thus barring its employment of interns.¹³¹

Assuming that a mandatory, one-year, postgraduate, prelicensure legal internship program were duly instituted enacted in a given American jurisdiction and were made applicable to all those seeking admission to the jurisdiction's bar, how, in broad terms, might such a program be executed? Each law school graduate who desired to apply for admission to practice law would be required to serve an adequately compensated, one-year legal internship in an accredited law office (or comparable setting, such as a corporate or governmental law department). The accrediting authority could be the entity which admits the jurisdiction's attorneys to practice (for example, the jurisdiction's bar association or its supreme court). I believe, however, that accreditation and oversight of the internship program should be the responsibility of an *independent* board established for such purposes, so as to minimize the conflict of interest inherent in a bar association's or supreme court's oversight of both attorneys and interns. The accreditation and oversight authority would have a special obligation to make certain that the interns were not exploited; interns must receive adequate pay and proper training and supervision, and they must not be delegated

130. See *infra* notes 138, 149 and accompanying text.

131. It is logical to assume that law offices or other entities employing legal interns would derive some economic benefit from the services of their interns in return for the provision of appropriate training and salaries; thus, removal of accreditation should be a sufficiently significant sanction to ensure widespread compliance with the minimum standards designed to protect the interns.

an unreasonable amount of tedious or menial tasks. A properly constituted independent accreditation and oversight board could adequately protect the interns' interests. The board would monitor the internship sites to ensure compliance with the minimum accreditation standards. This monitoring would not be inexpensive; some way would have to be found to finance the activities of accreditation and oversight. The necessary financing could be raised in one or more of the following ways: (1) through additional licensing fees, dues, or similar assessments imposed on all attorneys in the jurisdiction, (2) through a fee collected from those offices and other settings which desire to employ legal interns, or (3) through a fee collected directly from each intern.¹³²

Virtually any environment in which attorneys practice law could be a setting eligible for accreditation to employ legal interns: law firms; law departments of corporations or nonprofit entities; local, state, and federal government offices and quasi-governmental offices (including offices of prosecuting attorneys and public defenders); and legal aid and legal services offices or similar practice settings that provide legal services to groups traditionally underserved by the legal community. Because a disproportionately high number of interns are likely to choose a law firm or corporate setting for their internships and because of the need for legal interns and lawyers in nonprofit, government, and, particularly, legal aid settings, legal interns should be encouraged to pursue internships in these latter environments. This encouragement could take the following form: The presumably lower salaries that would be paid to legal interns in the nonprofit, government, and legal aid areas could be supplemented by stipends paid directly to such interns.¹³³ Further encouragement could come from postponement

132. The advantage of the second method of financing (i.e., fees imposed directly on those settings that employ interns) is that the costs of supervision would be borne by those attorneys who would most directly and tangibly benefit from the services of the interns and who, presumably, would have greater ability to pay, at least relative to the interns themselves. Financing under the first method (i.e., additional dues or assessments imposed on all practicing attorneys) could proceed under the theory that the entire legal profession would be the beneficiary of its members' increased level of competence resulting from the mandatory internship. If the second method of financing were adopted, accredited nonprofit, government, and legal aid settings (all of which have a lesser ability to pay any such fees), could either be exempt from such fees or could be eligible for fee reductions based on ability to pay. The third alternative (i.e., fees assessed directly on the interns) is the least palatable since, presumably, interns are less able to bear such fees than are attorneys or entities employing interns.

133. A way to fund these stipends would, of course, have to be devised. One way to finance them would be directly from the jurisdiction's general tax revenues. Alternatively, these stipends might be financed through an assessment levied on those interns choosing

of student loan repayment, suspension of interest accrual during the period of internship, or partial loan forgiveness.¹³⁴ By encouraging interns to serve in nonprofit, government, or legal aid settings, it is possible—perhaps likely—that a significant number would choose to remain in these practices after their admission to the bar. This would provide an additional important benefit to the public.¹³⁵

A mandatory one-year internship, coming immediately after three years of law school, would obviously delay the interns' entry into the legal profession. This delay seems a small price to pay, however, given the increased competence and legal experience that each intern would acquire as a result of the extra year of prelicensure training and the concomitant benefits of such competence and experience to the profession in general and to the public at large. The presence of these benefits to the profession and to the

to pursue their internships in the presumably higher-paid law firm and corporate settings. Such an assessment could even, in the interest of further equity, be graduated so that those law firm or corporate interns who draw the highest salaries would pay the highest assessments.

It is possible that some interns choosing a law firm or corporate internship setting might actually be paid lower salaries than some of those who choose nonprofit, government, or legal aid internships. Such unfortunate interns, however, should not be exempt from any assessment for at least three reasons. First, as a matter of public policy, nonprofit, government, and legal aid internships should be subsidized to encourage interns to pursue such internships and, ultimately, careers in these areas of practice. Second (and a direct corollary of the first reason), because interns should be encouraged to pursue internships in the nonprofit, government, and legal aid fields, the proposed assessment would help to accomplish this goal by making the law firm and corporate settings somewhat less attractive as internship alternatives. Third, to the extent that the law offices or corporations paying lower intern salaries nevertheless meet minimum internship accreditation standards, an assessment on their interns would provide an additional and reasonable economic factor which would tend to discourage interns from serving at these offices or corporations. Such discouragement would provide pressure on these entities to raise intern compensation appropriately and would also likely provide pressure on interns seriously to consider serving in nonprofit, government, or legal aid environments.

134. Some might argue that the shortage of lawyers in nonprofit, government, and, particularly, legal aid settings would dictate that *all* legal internships should be served in these settings. There is certainly merit to this argument, but, once again, some means of full or partial financing for these internships would have to be found. The necessary funds might come from the jurisdiction's general tax revenues or from an assessment (possibly graduated, in the interest of fairness) levied on all practicing attorneys. Even if all legal internships were required to be served in the nonprofit, government, and legal aid fields, appropriate student loan concessions should still be granted to the interns, at least for the duration of their internships.

135. This result could be further encouraged by extending student loan concessions, particularly partial or even full loan forgiveness, to those interns who choose to remain in nonprofit, government, or legal aid practices for a certain period of time after receiving their license.

public militates in favor of finding adequate means of funding mandatory legal internships. Moreover, a formalized, mandatory legal internship program that is properly accredited and monitored will minimize the shortcomings and maximize the strengths of law-office apprenticeship programs.¹³⁶ Service to the public can, as has been discussed above,¹³⁷ be furthered through mechanisms that will encourage interns to serve in nonprofit, government, and legal aid settings. In sum, although a one-year, postgraduate, prelicensure legal internship requirement is not without potential problems, it represents an important mode of improving the practice skills and competence of aspiring attorneys, with direct and indirect benefits for the profession and the public alike.

VI. CONCLUSION

This Article advocates a mandatory period of postgraduate, prelicensure legal internship as a vehicle for improving the practice skills and competence of new lawyers for the benefit of the public, the legal profession, and the new lawyers themselves. I began this Article by tracing the history of legal apprenticeship in America and by detailing the contemporary experience of England and Canada with respect to legal internship requirements. I then proceeded to a discussion of some of the more recent thinking on the issue of mandatory legal internships. The Appendix to this Article contains a survey of the current internship requirements in four other American professions.

I conclude with a call for the establishment of a one-year, postgraduate, prelicensure internship to be required of all bar applicants as an effective means of imparting practice skills to new lawyers and improving their general level of competence. The internship program must be structured in a way that will avoid the traps of contemporary apprenticeship programs in England and Canada and historical law-office apprenticeships in the United States: the exploitation of interns through unreasonably low pay and through an unreasonable amount of tedious, routine work with little or no educational value. While dodging these pitfalls, the internship program must be implemented in a manner that provides each intern with proper supervision, training, evaluation, and breadth and depth of legal experience, all in an accredited practice environment. Moreover, internships should be mutually beneficial both for the interns and for their attorney-mentors.

136. See *supra* notes 23, 48-51, 54-58, 72-83 and accompanying text.

137. See *supra* notes 133-35 and accompanying text.

Interns should be encouraged to serve their required internship year in nonprofit, government, and legal aid settings, because internships so served would have the further benefit of delivering additional legal services to segments of the population that are traditionally underrepresented.

Ultimately, the success of any mandatory, one-year, postgraduate, prelicensure legal internship program will be measured by how effectively the program teaches practice skills and prepares its participants for the competent practice of law. The program also will be judged by how successfully it protects the interns from exploitation during their required period of service. Failures in the execution of previous programs should not blind us to the very real benefits which will accrue to the legal profession, to the public at large, and to the interns themselves from a carefully designed and properly executed mandatory legal internship program.

APPENDIX: MODERN AMERICAN INTERNSHIP REQUIREMENTS IN THE PROFESSIONS OF MEDICINE, CERTIFIED PUBLIC ACCOUNTANCY, ARCHITECTURE, AND PSYCHOLOGY

Although modern American postgraduate, prelicensure internship requirements vary among the professions of medicine, certified public accountancy, architecture, and psychology, and also vary among the individual licensing jurisdictions within those professions, there are some common patterns. The most common of these patterns is the requirement of at least one year of postgraduate, prelicensure professional training as a prerequisite for admission to the profession. A brief examination of these internship requirements follows.

I. MEDICINE

The postgraduate, prelicensure training requirements in medicine vary from state to state, but it is possible to arrive at some general conclusions about this subject. To receive a license to practice medicine in the typical American jurisdiction, a graduate of an accredited United States medical school is required to complete a prescribed residency period in an accredited residency program¹³⁸ and to pass a medical examination.¹³⁹ The minimum period of residency required for initial licensure, exclusive of any additional residency requirements for medical specialization, is one year in most American jurisdictions.¹⁴⁰ Eleven jurisdictions require more than one year, and Louisiana has no residency requirement.¹⁴¹ Thus, every American jurisdiction, except Louisiana, requires at least one year of postgraduate, prelicensure professional training of all aspiring physicians.

138. The accrediting authority for most American residency programs is the Accreditation Council for Graduate Medical Education. *THE FEDERATION OF STATE MEDICAL BOARDS OF THE UNITED STATES, FLEX AND M.D. LICENSING REQUIREMENTS* 44-45 tbl. 5 (1989-90).

139. See Arthur M. Osteen, *Medical Licensing Requirements*, 258 JAMA 1053, 1054 (1987).

140. CATHERINE M. BIDESE, *U.S. MEDICAL LICENSURE STATISTICS AND CURRENT LICENSURE REQUIREMENTS*, 25 tbl. 14 (1991). United States jurisdictions covered in this source include all fifty states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

141. *Id.* These eleven jurisdictions are Connecticut, Delaware, Guam, Illinois, Maine, Michigan, Nevada, New Hampshire, Pennsylvania, South Dakota, and Washington.

II. CERTIFIED PUBLIC ACCOUNTANCY

The postgraduate, prelicensure professional experience requirements for certified public accountants differ greatly among jurisdictions in the United States. The most common practice is to mandate one year of postgraduate, pre-admission professional experience for those applicants holding a graduate degree and two years of experience for applicants holding only a bachelor's degree. This pattern is by no means universal. Some jurisdictions require more pre-admission professional experience, some require less, and a few do not require any experience as a prerequisite for licensure.¹⁴²

III. ARCHITECTURE

As in the case of medicine and certified public accountancy, the licensure requirements in the field of architecture vary among the states. Unlike the medical profession, the architectural profession has not made an accredited professional degree a universal prerequisite for licensure; by 1987, though, a majority of states did require such a degree of all applicants seeking to take architectural licensing examinations.¹⁴³ Each state requires some form of internship of a specified duration and diversity as a prerequisite for architectural licensing.¹⁴⁴ Most architectural interns satisfy their preprofessional, prelicensure training requirement in the office of a licensed architect, although some train in less traditional settings and may, as a consequence, receive less credit.¹⁴⁵ After satisfaction of the state's education and training prerequisites, aspiring archi-

142. THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS & THE NATIONAL ASSOCIATION OF STATE BOARDS OF ACCOUNTANCY, *DIGEST OF STATE ACCOUNTANCY LAWS AND STATE BOARD REGULATIONS* 70-73 tbl. (1985). The jurisdictions referred to in this paragraph include all fifty American states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

143. 1 THE AMERICAN INSTITUTE OF ARCHITECTS, *THE ARCHITECT'S HANDBOOK OF PROFESSIONAL PRACTICE* 1.2-12 to -13 (1988).

144. *Id.* at 1.3-11 to -12.

145. *Id.* at 1.3-12 to -13. The National Council of Architectural Registration Boards, through its Intern-Architect Development Program, has issued standards for the in-office training of intern architects. *Id.* at 1.3-8, 1.3-13. According to those standards, each intern architect is to have a "professional sponsor" who supervises his or her professional prelicensure training. In addition, the aspirant has a "professional adviser" who meets regularly with the intern to discuss his or her progress and to guide him or her toward the goal of licensure. *Id.* at 1.3-14. In law, a similar system of supervision, consisting of a professional sponsor and a professional adviser, could be used in any mandatory internship program, with the professional adviser responsible to the independent accreditation and supervising authority.

tests may apply to take the state's licensing examination.¹⁴⁶

IV. PSYCHOLOGY

The licensure requirements in the field of psychology also vary from state to state. The vast majority of states require one or two years of postgraduate, prelicensure professional training for those candidates with doctorates in psychology.¹⁴⁷ However, a small number of states have no such training requirements.¹⁴⁸ Accredited doctoral programs in psychology also impose their own internship requirements as conditions precedent to receipt of the doctorate in the field.¹⁴⁹ Thus, even in those jurisdictions that do not require postgraduate, prelicensure professional training for aspiring psychologists, applicants for licensure holding doctorates will, in any event, have had the equivalent of one year of prelicensure preprofessional training.

146. *Id.* at 1.3-15 to -16.

147. DANIEL R. MARTIN & J. RICHARD COOKERLY, A DIRECTORY OF CREDENTIALS IN COUNSELING AND PSYCHOTHERAPY 188-91 tbl. (1989). Some states permit persons who hold only the master's degree to practice under some lesser designation, usually upon completion of a greater number of years of prelicensure, preprofessional training. *Id.*

148. *Id.*

149. BRUCE R. FRETZ & DAVID H. MILLS, LICENSING AND CERTIFICATION OF PSYCHOLOGISTS AND COUNSELORS: A GUIDE TO CURRENT POLICIES, PROCEDURES, AND LEGISLATION 68-69, 116 (1980). The American Psychological Association (APA), which accredits university graduate and internship programs in clinical, counseling, and school psychology, imposes a predegree internship requirement consisting of one year of full-time or two years of half-time experience. *Id.* at 116-19. Significantly, APA guidelines provide that institutions training interns must be genuinely committed to this training and must not simply use the interns as a source of cheap labor. *Id.* at 123. In law, similar protection must be afforded to all interns in order for any required internship program to be successful.

